WP(C) 2199/1999
BEFORE
THE HON'BLE MR JUSTICE RANJAN GOGOI

1. An award dated 20.10.98 passed by the learned Labour Court, Dibrugarh in Reference Case No. 23 of 1996 has been assailed in the present writ application.

2. The Govt.of Assam by Notification dated 17.10.96 referred the following two questions for adjudication by the learned Labour Court at Dibrugarh :

1.(a) Whether the management of Gorunga Tea Estate P.O. Golaghat is justified in Dismissing the services of Smti Chenimai Bora, Nurse with effect from 18.4.96?

2(b) If not, is the workman entitled for reinstatement along with back wages or any other relief in lieu thereof ?

3. On receipt of the reference, Case No. 23/96 was registered and notices were issued to both the parties. Both the parties, thereafter, appeared before the learned Court below and filed their written statements. Before the learned Labour Court , the Management relied upon the findings of the domestic enquiry held prior to dismissal of the workman from service. Alternatively, the Management also laid evidence on the merit of the dismissal. The workman also led oral and documentary evidence before the learned Labour Court in the course of the proceedings before it. The learned Labour Court on due consideration of the evidence and materials on record adduced by the parties, had passed the impugned award dated 20.10.98 answering both the questions against the workman and in favour of the Management. Consequently, the workman has instituted the present writ proceeding before the Court.

3. The facts which will be relevant for the present adjudication may be briefly noticed at this stage.

At the relevant point of time, the petitioner-workman was employed as a Nurse in the Garunga Tea Estate in the Golaghat District. On 17.12.94, a charge memo was issued to the petitioner proposing to hold a domestic enquiry with regard to certain charges levelled. The first charge against the petitioner was one of misuse of hospital equipments, more particularly, it was alleged that on 3.4.93 the workman had used the hospital syringe to inject a calf though it was meant for human use. The second charge against the petitioner was in respect of her alleged rude behavior to the patients. The third charge was that on 26.11.93 the petitioner had assaulted one Shri Dinesh Bhuyan, a Mali working in the Hospital.

The petitioner submitted her reply to the charges levelled which being unsatisfactory an Enquiry Officer was appointed to hold an enquiry against the petitioner. The management as well as the petitioner workman participated in the domestic enquiry at the conclusion of which the report of enquiry was submitted holding the charges levelled to be proved. On the basis of the said report of enquiry, the Management dismissed the petitioner-workman from service w.e.f. 18.4.95. At this stage, it may be noticed that the domestic enquiry held against the petitioner, insofar as the proceedings dated 2.12.94 are concerned, was held ex parte. According to the petitioner, she could not participate in the enquiry on the said date as her son had to be hospitalized and, therefore, on the next day i.e. on 3.12.94 an application was submitted to the Management for reconvening the enquiry proceeding which had been closed on 2.12.94. The said request of the workman was not entertained by the Management.

After the petitioner was dismissed from service she raised a dispute with regard to the validity of her dismissal which ended in an abortive conciliatio

n proceeding held under the provisions of the Industrial Disputes Act, 1947, T hereafter, the State Govt., in exercise of its power under section 10 of the Act made a reference, of the questions already noticed ,to the learned Labour Cour t at Dibrugarh for adjudication on completion of which the impugned award date d 20.10.98 has been passed.

4. I have heard Mr.D.C.Mahanta, learned Sr. Counsel for the petitioner and Mr.A.C.Das, learned counsel for the Respondents.

5. Shri Mahanta, learned counsel for the petitioner has contended that in t he present case the proceeding of the domestic enquiry, ex face, would appear to be invalid in law inasmuch as the evidence of as many as 5 witnesses were exami ned ex parte against the workman on 2.12.94. According to Mr.Mahanta, the petiti oner was prevented from appearing before the Enquiry Officer due to the illness of her son which had required his hospitalization. Mr.Mahanta has further submit ted, by referring to the proved documents on record, that an application along a medical certificate was submitted to the Management by the workman seeking reco nvening of the enquiry which was closed on 2.12.2004. According to Shri Mahanta, though the grounds for the said request were sound, the enquiry was not reconv ened and no opportunity was given to the workman to cross examine the witnesses whose evidence, however, came to be relied upon by the Enquiry Officer. In such circumstances, according to Shri Mahanta, the findings of the Enquiry Officer an d the dismissal order based thereon are ex facie untenable and illegal. Shri Ma hanta, has also argued that the learned Labour Court did not properly consider t he aforesaid aspect of the matter before recording its view that the domestic e nquiry was fair and just. In this regard, Shri Mahanta has pointed out that the application filed by the petitioner on 3.12.2004 for reconvening of the enquiry proceeding has been ignored by the learned Court below for no apparently good r eason. In conclusion, Shri Mahanta , learned counsel has submitted that the awa rd dated 20.10.98 having been passed on the basis of the findings of the domesti c enquiry which was not fair and just, the said award should be set aside and th e matter remanded to the learned Court below for a de novo consideration on the basis of the evidence adduced by the Management on the merit of the dismissal.

6. Shri A.C.Das, learned counsel for the Respondents, while controverting t he arguments advanced by Shri Manata, learned counsel for the petitioner, has co ntended that in the present case evidence on the merits of the dismissal was al so adduced by the Management before the learned Labour Court besides relying on of the proceeding of the domestic enquiry. Shri Das has argued that a mere r eading of the impugned award dated 20.10.98 would go to show that the learned La bour Court has not only held the domestic enquiry to be valid but had also consi dered the evidence adduced on merit to come to the finding that the dismissal of the workman was justified.

7. I have considered the rival submissions advanced by the parties. I have also read and considered the impugned award dated 20.10.98 and the evidence and materials available on record.

8. The learned Labour Court has taken the view that the domestic enquiry he ld against the petitioner was fair and just. In this regard, the learned Court b elow has recorded that on 2.12.94 the Enquiry Officer waited till 12 in he afte rnoon but the workman concerned failed to appear before the Enquiry Officer.Ther eafter, the Enquiry Officer proceeded with the Enquiry by examining the witness es present, whereafter, the enquiry was closed. The learned Labour Court has als o recorded that though the application and the Medical Certificate dated 3.12.94 were exhibited by the workman there is no evidence that the said application an d Medical Certificate was sent by the workman and received by the Management. In such circumstances, the learned Labour Court thought it proper to hold that the domestic enquiry held against the petitioner was fair and just.

9. The case of by the workman is that on 2.12.94 her son had to be hospita lized and, therefore, she could not appear before the Enquiry Officer. According to the workman, on 3.12.94 she had informed the Management the said fact by su

bmitting an application along with the medical certificate of the treatment received by her son on 2.12.94. In the said circumstances, the workman had prayed that at the Enquiry should be reconvened. The said application dated 3.12.94 was exhibited before the learned Labour Court along with the medical certificate . The workman had orally deposed the said facts narrating that she could not appear before the Enquiry Officer on 2.12.94 due to the illness of her son and that she had sent an application along with the Medical Certificate on 3.12.94 to the Management . Beyond the above what further proof could have been laid by the workman is not very clear to this Court. Two conclusions were reasonably possible on the said facts . The first is that the documents in question were received by the Management but such receipt is being denied. Alternatively, the workman had not sent the said documents at all. Either of the two alternatives are possible. In such a situation, keeping in mind the purpose of an adjudication under the Industrial law, the learned tribunal should have felt it safer to hold that the domestic enquiry against the petitioner was not held fairly. The contrary view expressed by the learned Labour Court on the basis of the facts noticed above, therefore, must be disagreed to by this court.

10. This will bring the Court to a consideration of the next point urged by the petitioner. It is always open for an employer , before the industrial forum , to rely on the domestic enquiry held and at the same time to adduce evidence to justify the dismissal or any punishment as may have been imposed on the basis of the findings of the domestic enquiry. In the present case the said course of action was adopted by the Management .
Elaborate oral and documentary evidence was adduced by the Management to bring home the validity of the dismissal order independently /irrespective of the validity of the domestic enquiry. A bare reading of the impugned award would go to show that in the present case, the learned Labour Court has considered the evidence adduced by the parties on the merit of the dismissal. The evidence of Shri Dinesh Bharali ie. the person who the petitioner is alleged to have assaulted was read and considered by the learned Court below in respect of the third charge levelled against the petitioner. The learned Labour Court also considered Exhibit No.4, brought on record by the Management ,wherein there is a virtual admission of the workman insofar as the charge No.1 is concerned. Relying on the aforesaid evidence, the learned Court below came to the conclusion that the charge against the workman has been established. I have read and considered the evidence of Shri.Dinesh Bharali and Exhibit No.4 and it is my considered view that on consideration of such evidence it is possible to come to the conclusion that the charges in question, as levelled against the workman, have been established.

11. The learned Labour Court has also considered the adequacy of punishment imposed in the context of its power under section 11A of the Act. Thereafter, the leaned Court took the view that the punishment imposed is just and adequate. I have also considered the aforesaid aspect of the matter in the light of the facts and circumstances of the case. On such consideration I find myself in full agreement with the views expressed by the learned Labour Court that the punishment imposed on the petitioner needs no interference.

12. For the foregoing reasons this writ petition has to fail . It is accordingly dismissed. However, in the facts and circumstances of the case I make no order as to costs.